TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~355~~ 145

THE MICHIGAN INSURANCE BANK, PLAINTIFF IN ERROR,

vs.

ANSON ELDRED, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

FILED DECEMBER 14, 1858.

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1 Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said district of Wisconsin, on the second Monday (being the ninth day) of April, A. D, 1866. Present the Honorable Andrew G. Miller, district judge, presiding; Darius C. Jackson, marshal; A. Scott Sloan, clerk.

Among other, the following proceedings were had, to wit:

THE MICHIGAN INSURANCE BANK, plaintiff,
vs.
ANSON ELDRED, ELISHA ELDRED, & URI Balcom, defendants. } At law.

Be it remembered that heretofore, to wit, on the eighth day of June, A. D. 1864, came the above-named plaintiff, by its attorney, Mr. W. I. Butler, and filed its præcipe for a summons against the above-named defendants as follows, to wit:

Præcipe for summons.

U. S. cir. court, district of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, and Uri Balcom.

Please issue summons in the above-entitled cause, and make the same returnable, according to law, in an action of trespass on the case, upon promises. Damages ten thousand dollars, ($10,000.)

Y'rs, &c.,

W. I. BUTLER,
Pl'ff's Att'y.

And at the same time filed a bond for costs, according to the rules of court, as follows:

2 Know all men by these presents, that we, The Michigan Insurance Bank of Detroit, State of Michigan, as principal, and W. I. Butler, of Milwaukee, State of Wisconsin, as surety, are held and firmly bound unto Anson, Uri Balcom, and Elisha Eldred, in the sum of two hundred dollars, to be paid to the said Anson Eldred, Uri Balcom, and Elisha Eldred, their executors, administrators, or assigns; to which payment, well and truly to be made and done, we do bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals the seventh day of June, A. D. 1864.

Whereas a summons, in an action at the suit of the Michigan Insurance Bank aforesaid, hath been issued against the said Anson Eldred, Uri Balcom, and Elisha Eldred: Now, therefore, the condition of this obligation is such, that if the defendants recover judgment, the plaintiff will pay all costs that may be awarded to the defendants, and all damages which they may sustain by reason of the commencement of said suit, not exceeding the aforesaid sum, then this obligation to be void, else valid.

[SEAL.] THE MICHIGAN INSURANCE BANK,
By W. I. BUTLER, *Its' Att'y.*

[SEAL.] W. I. BUTLER.

Witness:
JARED THOMPSON, Jr.

(Endorsed as follows:) Approved and filed June 8, 1864.
A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

Whereupon a summons issued as follows:

3 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the marshal of the district of Wisconsin, greeting:

You are hereby commanded to summon Anson Eldred, Elisha Eldred, and Uri Balcom to appear before the circuit court of the United States of America for the district of Wisconsin, in the ninth circuit, at the United States court-room, in the city of Milwaukee, on the first Monday of July next ensuing, then and there to answer unto the Michigan Insurance Bank, in a plea of trespass on the case on promises to its damage ten thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the said district, this eighth day of June, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-eighth.

[SEAL] A. SCOTT SLOAN, *Clerk.*
W. I. BUTLER, *Attorney.*

4 *Return to summons.*

Summons returned: "Served on the within-named Anson Eldred, by showing him this summons and delivering him a copy thereof, this 13th day of June, 1864.

"D. C. JACKSON, *Marshal.*
"By W. S. JACKSON, *Deputy.*"

Fees $2 26.

JULY 1, 1864.—This day came the plaintiff, by its attorney, and filed its declaration as follows, to wit:

Declaration.

Circuit court of the United States for the district of Wisconsin.—Of the September term, A. D. 1864.

DISTRICT OF WISCONSIN, *ss*:

The Michigan Insurance Bank, which is a corporation duly organized and doing business under and by the laws of the State of Michigan, plaintiff in this suit, by W. I. Butler, its attorney, complains of Anson Eldred, Uri Balcom, and Elisha Eldred, defendants in this suit, who, at the time of the contracting of the obligation and indebtedness hereinafter mentioned, were copartners in trade, under the style and firm of Eldreds & Balcom, and who are citizens of the State of Wisconsin, of a plea of trespass on the case upon promises.

For that whereas one F. E. Eldred heretofore, to wit, on the 12th day of June, A. D. 1861, at Detroit, to wit, at the district of
5 Wisconsin aforesaid, made a certain note in writing, commonly called a promissory note, bearing date the day and year last aforesaid, and then and there delivered the said note to the said defendants, by which said note the said F. E. Eldred promised to pay to the order of the said defendants, by the name of Eldreds & Balcom, sixty days after the date thereof, the sum of four thousand dollars, at the Michigan Insurance Bank, value received, and the said defendants to whom or to whose order the payment of the said sum of money in the said note specified was to be made as aforesaid, afterwards, and before the payment of the said sum of monies mentioned in the said note, or any part thereof, and also before the time limited and appointed by the said note for the payment thereof, to wit, on the same day and year, and at the place aforesaid, endorsed the said note in writing and by that endorsement ordered and appointed the contents of the said note to be paid to the said plaintiff, and then and there delivered the said note so endorsed to the said plaintiff. And the said plaintiff avers, and in fact says, that afterwards, when the said note became due and payable according
6 to the tenor and effect thereof, to wit, on the fourteenth day of August, A. D. 1861, at the place aforesaid, the said note, with the said endorsement thereon made as aforesaid, was presented and shown to the said F. E. Eldred, the maker thereof, for payment thereof, who then and there had notice of the said endorsement, and who then and there was requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and of the said endorsement so thereon made as aforesaid. But neither the said F. E. Eldred, nor any person or persons on behalf of the said F. E. Eldred, did or would at the said time when the said note was so presented and shown as aforesaid, or at any time before or afterwards, pay the said sum of money therein specified, or any part thereof, but wholly neglected and refused so to do; all

of which said several premises the said defendants afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, had notice. By reason whereof, and by force of the statute in such case made and provided, the said defendants became liable to pay to the said plaintiff the said sum of money in the said note specified;

7 and being so liable, the said defendants in consideration thereof afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff to pay it the said sum of money on the said note specified when the said defendants should be thereunto afterwards requested.

8 And, for that, whereas the said defendants on the first day of June, in the year one thousand eight hundred and sixty-four, at the said district of Wisconsin, were indebted to the said plaintiff in the sum of ten thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence of the said plaintiff, by the said plaintiff before that time done, performed, and bestowed, in and about the business of the said defendants, and for the said defendants, and at the special instance and request of the said defendants, and also for divers materials and other necessary things by the said plaintiff found, provided, used, and applied in and about that work, at the special instance and request of the said defendants, and being so indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendants done, performed, and bestowed divers other work and labor, care and diligence, in and about the business of the said defendants, and for the said defendants, and had before that time found, provided, used, and applied divers other materials, and other necessary things in and about that business, the said defendants then and there undertook and faithfully promised the said plaintiff that the said defendants would well and truly pay the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendants for the same, when the said defendants should be thereunto afterwards requested; and the said plaintiff avers that the said plaintiff therefore reasonably deserves to have of the said defendants for the same the further sum of ten thousand dollars of like lawful money as aforesaid, to wit, at the place aforesaid, whereof the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, were indebted to the said plaintiff in the sum of ten thousand dollars, of like lawful money as aforesaid, for divers goods, wares, and merchandise by the said plaintiff before that time

sold and delivered to the said defendants, and at the like request of the said defendants. And in the further sum of ten thousand dollars of lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants. And for other money by the said plaintiff before that time paid, laid out, and expended for the said defendants, and at the request of the said defendants. And for other money by the said defendants before that time had and received to and for the use of the said plaintiff. And being so indebted, the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the several sums of money in this count mentioned when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendants then and there found to be in arrear and indebted to the said plaintiff in the further sum of ten thousand dollars of like lawful money as aforesaid. And being so found in arrear and indebted to the said plaintiff the said defendants, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants, although often requested, &c., have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but to pay the same or any part thereof to the said plaintiff the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of ten thousand dollars, and therefore the said plaintiff brings suit, &c.

W. I.. BUTLER,
Plaintiff' Attorney.

9 To the within defendants:

Take notice that the following is a copy of a promissory note which will be offered in evidence on the trial of this cause under the money counts in the within declaration contained.

Yours, &c.,

W. I. BUTLER,
Plaintiff's Attorney.

[Copy.]

"$4,000. DETROIT, *June 12th*, 1861.

"Sixty days after date I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank; value received.

(Signed) F. E. ELDRED."

Endorsed: "Eldreds & Balcom."

10 *Substitution of plaintiff's attorneys.*

SEPTEMBER 13, 1864.—This day came the plaintiff, by its attorney, and filed its consent to the substitution of Finches, Lynde & Miller, as the attorneys of the said plaintiff, and on its motion it is ordered by the court that Messrs. Finches, Lynde & Miller be, and they are hereby, substituted as the attorneys of the said plaintiff, in the place and stead of W. I. Butler.

Said consent to substitution is as follows:

U. S. circuit court, district of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED *et al.*

I hereby consent to the substitution of Messrs. Finches, Lynde & Miller as attorneys for said plaintiff.

W. I. BUTLER, *Pl'ff's Att'y.*

MILWAUKEE, *Sept.* 12, '64.

SEPTEMBER 15, 1864.—This day came the defendant, Anson Eldred, by his attorneys, Messrs. Cary & Pratt, and filed his plea as follows:

Plea of Anson Eldred.

U. S. circuit court, district of Wisconsin.

ANSON ELDRED, impleaded, &c.,
ads.
MICHIGAN INSURANCE BANK.

And now comes the said defendant, Anson Eldred, by Cary & Pratt, his attorneys, and defends the wrong and injury, when, &c.,
11 and says that said defendants did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them; and of this he puts himself upon the country, &c.

CARY & PRATT,
Att'ys for Def't.

JANUARY 3, 1865.—This day came the parties, by their counsel, and, by consent, it is ordered by the court that this cause be, and the same hereby is, continued.

APRIL, 17, 1865.—This day depositions received from post office and filed.

APRIL 19, 1865.—Depositions received from post office and filed.

JULY 12, 1865.—This day came the plaintiff, by its attorneys, and, on their motion, it is ordered by the court that the depositions on file in this cause be, and the same are, published.

And now, at this same term, to wit, April term, A. D. 1866, and on the 19th day thereof, to wit, on the second day of May, A. D. 1866, the following proceedings were had, to wit:

Trial.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED. } At law.

This day came the parties, by their counsel, and the issue herein came on to be tried, whereupon a jury was called to try the same, who came, to wit: R. W. Ryckman, George Bowman, Israel Stebbins, George W. Clason. F. J. Crosby, J. Fowle, M. C. Cooke, A. J. W. Pierce, Arthur W. Wheelock, John Ruan, Henry T. Thompson, and James Curry, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled; and, the trial of this cause not being concluded, the further hearing was adjourned until to-morrow morning at nine o'clock.

12

And afterwards, to wit, on the twentieth day of said term, to wit, on the third day of May, A. D. 1866, the following proceedings were had, to wit:

Trial concluded and verdict.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED. } At law.

This day came the parties, by their counsel, and the trial of this cause was resumed; and the jurors of the jury aforesaid being charged by the court, retire to their room, under the charge of a sworn officer, to deliberate on their verdict; and the jurors of the jury aforesaid return into court, and upon their oaths respectively do say that the defendant did not assume and promise in manner and form as the said plaintiff hath declared against him.

And came the plaintiff, by its counsel, and filed its motion to set aside the verdict, and for a new trial, as follows:

13 *Motion for new trial.*

Circuit court of the United States in and for the district of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED *et al.*

And now comes the said plaintiff, by Finches, Lynde & Miller, and moves the court now here to set aside the verdict of the jury in this cause, and for a new trial, for the reason that the verdict is contrary to law and against the evidence,

FINCHES, LYNDE & MILLER,
Def't's Att'ys.

And afterwards, to wit, on the 25th day of said term, to wit, on the eleventh day of May, A. D. 1866, the following proceedings were had, to wit:

Motion for new trial overruled, and judgment.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED. } At law.

This day came the parties, by their counsel, and the motion for a new trial came on to be heard, and was argued by counsel, whereupon it is ordered by the court that said motion be, and the same hereby is, denied; whereupon it is considered and adjudged by this court now here, that the said plaintiff take nothing by its said writ, and that the defendant do have and recover of the plaintiff the sum of sixty-eight dollars and twenty-six cents, his costs about his said defence in this behalf by him sustained, and that he have
14 execution therefor.

Judgment roll signed May 11th, A. D. 1866. Costs, $68 26.
A. SCOTT SLOAN, *Clerk.*
By JAMES McFARLIN, *Deputy.*

Judgment roll filed May 11, 1866, at 3 o'clock p. m.
A. SCOTT SLOAN, *Clerk,*
By JAMES McFARLIN, *Deputy.*

And same day, (May 11, 1866,) upon filing the consent of Cary & Pratt, it is ordered by the court that John W. Cary be, and hereby is, substituted as the attorney of record for the defendant in this cause.

Said substitution is as follows:

Substitution of J. W. Cary, att'y for def't.

Circuit court United States, district of Wisconsin.

ANSON ELDRED, impleaded, &c., *ads.*
THE MICHIGAN INSURANCE BANK.

We hereby consent that John W. Cary be substituted as attorney for the defendent in the above-entitled action.

Dated August 15th, 1865.

CARY & PRATT, *Att'ys.*

DECEMBER 2, 1867.—Bill of exceptions filed by consent as of May 11th, 1866, as follows, to wit:

15 *Bill of exceptions.*

Circuit court of the United States in and for the district of Wisconsin.

THE MICHIGAN INSURANCE BANK
vs.
ANSON ELDRED, ELISHA ELDRED, and Uri Balcom.

Be it remembered that heretofore, to wit, on the second day of May, in the year of our Lord one thousand eight hundred and sixty-six, at the court-room of the United States, in and for the district of Wisconsin, at a term of the circuit court of the United States in and for the district of Wisconsin, then and there being held in the city of Milwaukee, in said district of Wisconsin, by the Honorable Andrew G. Miller, one of the judges of the said court, come as well the said plaintiff, by Finches, Lynde and Miller, its attorneys, and the said defendant, Anson Eldred, by John W. Cary, his attorney, and the issue made by and between the said parties in the above cause came duly on for trial, and a jury of twelve good and lawful men being duly called, did come, and being duly empanneled,
16 were duly sworn, and both parties being present, and accepting the said jury, the said plaintiff, to maintain and support the issue on his part, did offer and read in evidence the following promissory note, a copy of which said note is attached to the declaration in this cause, and is in words and figures following, to wit:

D. J. D.

$4,000. DETROIT, *June* 12, 1861.

Sixty days after date, I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank; value received.

F. E. ELDRED.

Protested for non-payment August 14th, 1861.

H. P. SANGER,
Notary Public Wayne County, Mich.

"Exhibit B," marked by Wm. D. Wilkins, comm'r.
(Endorsed:) Eldreds & Balcom, D. J. D.

Said note having been read in evidence, the plaintiff did thereupon call as a witness one Elisha Eldred, who being duly sworn to tell the truth, the whole truth, and nothing but the truth, did testify as follows:

Reside in Chicago, Illinois; I was one of the firm of Eldred & Balcom; I resided in Chicago in June, 1861; the firm of Eldreds & Balcom was engaged in business in Chicago during a portion of the
17 year 1861; the firm received a notice of the protest of the note in suit in Chicago; I have searched for the notice and cannot find it; seldom keep such things; have looked to see if I could find it; was not able to find the notice.

Cross-examined:

We did receive several notices of protest at Chicago at different times; we received notices of protest right along for two or three months; Eldreds & Balcom had been in business together since 1857; closed business in the forepart of July, 1861, at Chicago; the firm made an assignment of all its lumber, assigned everything except debts due after the assignment; the firm was not engaged in business in Chicago; I was there until the fall of October, 1861, settling up the business of Eldreds & Balcom. Not much of our paper was protested until after the assignment; after the assignment, our paper generally went to protest; I cannot find any note or memorandom of this protest; have looked for it, made a note of this particular protest; have nothing now but my recollection; I made a memorandum of the note; I think I destroyed the memorandum; after the first of July received several notices of protest; received all the notices of
18 protest of my brother's paper; it was a common thing to indorse paper; the indorsement on the note in suit was made by me; I think that I made the indorsment in the spring of 1860; I indorsed quite a number of the notes in Detroit, and the defendant, Anson Eldred, was there; the maker of the note, F. E. Eldred, is my brother; I don't recollect that I indorsed just fifty notes; I think it was just fifty-five; they were all indorsed in blank; the notes were not filled up, except being signed by F. E. Eldred, but the written part was not filled up at all at the time of indorsement; the notes were signed sometime in the spring of 1860; can't tell the month; the note was not given to the firm of Eldreds & Balcom, it never passed through their hands at all; don't recollect that I signed just fifty notes; my recollection is, that it was fifty-five notes; Mr. Anson Eldred, the defendant, was in Detroit at the time of the indorsement; he knew of the indorsement, and advised me to do it; I am now engaged in the lumber business, as the [as the] agent of John Owen, Detroit, and have been since the spring of 1862; John Owen is the president of the bank.

The agreement was made between F. E. Eldred and the firm
19 of Eldreds & Balcom, that each should indorse the other's paper in blank; he indorsed for Eldreds & Balcom sometimes one hundred notes at a time in blank; he was to indorse whatever

the firm of Eldreds & Balcom wanted, and Eldreds & Balcom were to indorse whatever he wanted; this arrangement was made with the consent of the defendant, Anson Eldred; he (Anson Eldred) received the most of the money that was got upon the indorsement of F. E. Eldred; the note in suit was one of those given in pursuance of that agreement; under this arrangement F. E. Eldred was to fill up the notes so indorsed for the amount, and date the same as he saw fit.

Re-examined:

This agreement with F. E. Eldred was made in the winter of 1857, when I went east to negotiate for a loan of $60,000 for the firm. I got that amount upon the indorsement of F. E. Eldred, and sent it to Anson Eldred. I have not spoken with my brother Anson for some years.

And thereupon the plaintiff offered and read in evidence, the following deposition of H. P. Sanger:

Henry P. Sanger, being by me first carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid,
20 did thereupon depose and say as follows:

I reside in Detroit, and have so resided since 1850. In 1861 I was a notary public for Wayne county, Michigan, qualified and acting as such. (Witness being now shown a note, attached to the deposition of Francis E. Eldred, and marked Exhibit B, saith:) I have seen this paper before; on 14th August, 1861, at which time I presented it to the Michigan Insurance Company Bank, at the request of Henry R. Sanger, then cashier of said bank, and demanded payment, and payment was by said bank refused. I protested it on the same day, and the certificate of protest attached to Exhibit B was made and attached to said note at the same time. I put a notice of protest in the post office at Detroit on the same day, postpaid, and addressed to Eldreds and Balcom, at Chicago, Illinois; using a printed form of notice, of which form I now attach a copy, marked Exhibit G. The notice was dated August 14th, 1861, and was addressed to "Eldreds & Balcom." It contained a description of said note, the amount for which it was made, the name of the maker, the name of the endorser, the date thereof, the time when payable, the place where payable, and that the demand had been made on that day, for payment thereof, to the Michigan In-
21 surance Bank, and that payment had been refused, and that the same was signed by me as notary public. My notarial fees were 75 cents, and the postage thereon was 3 cents.

On cross-examination:

I was paying teller of the bank on the day referred to. As notary, I presented the note to the book-keeper of the bank, and asked him if were any funds to the credit of F. E. Eldred. He said there was not. I then took it to the cashier of the bank. He instructed me to protest it, and said Eldreds & Balcom lived in Chicago. I asked him to pay it, and he refused so to do. I kept at the

time a copy of this note and a copy of the notice sent. The certificate of protest was filled up on the same day that the endorsement on the face of the note was made, and it was attached to the note on the same day. I cannot say whether the certificate of protest has remained attached to the note ever since, because I handed it to the bank on the next day. I cannot say that the certificate of protest produced and attached to Exhibit B is the same certificate which was attached to the note on that day. I have not been called upon to make out any other certificate to the same effect. It is the
22 custom to minute the fees of the notary on the certificates of protest. The note was in my hands as paying teller of the bank, and it was a part of my duty to see that any paper left in my hands as paying teller, whether of a customer of the bank or belonging to the bank itself, was either paid or was duly protested for non-payment. The note came into my hands on the morning of the 14th day of August, 1861.

On re-direct-examination:

I have no doubt whatever that the protest attached to Exhibit B is the original certificate of protest made out by me at the time. I have never been called upon to make out any other.

H. P. SANGER.

Sworn and subscribed before me this 10th day of April, 1865, at Detroit, Michigan.

WM. D. WILKINS, *U. S. Comm'r.*

[Copy.]

$4,000. DETROIT, *June* 12, 1861.

Sixty days after date I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank. Value received.

(Signed) F. E. ELDRED.

Endorsed: ELDREDS & BALCOM.

Protested for non-payment August 14th, 1861.

H. P. SANGER,
Notary Public Wayne Co., Mich.

23 STATE OF MICHIGAN, *County of Wayne, ss:*

Be it known, that on the 14th day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of H. R. Sanger, cashier, I, Henry P. Sanger, notary public, duly admitted and sworn, dwelling in the city of Detroit, county and State aforesaid, did present the original—a true copy of which is attached—at the Michigan Insurance Bank, in the city of Detroit, and demanded payment thereof, which was refused.

Whereupon I, said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker and endorser of the said note as against all others whom it doth or may concern, for exchange or re-exchange, and all costs, charges,

damages, and interest already incurred by reason of the non-payment of said note; and I, the said notary, do hereby certify, that on the same day and year aforesaid due notices that said note had thus been presented for payment, and that payment thereof had been thus demanded and refused, and that the holders of the said note did and would look to the drawers, makers, and endorsers thereof for
24 payment of the same, notices were put into the post office of Detroit, with the full legal postage paid thereon, and directed as follows, after diligent enquiry being made for the residence of the drawers and endorsers, and not being able to ascertain it.

Notice for Eldreds & Balcom, directed Chicago, Ills.; and I further certify that the like notices were left as follows:

Notice left for	at
"	"
"	"
"	"

Each of the above-named places being the reputed place of residence of the person to whom the notice was directed, or for whom it was left as aforesaid.

In witness whereof, I have hereuuto subscribed my name and affixed my seal of office.

[SEAL.]

HENRY P. SANGER,
Notary Public Wayne county, Mich.

25 "*G.*"

DETROIT, MICH., 186 .

M———: Take notice that the for $, made by , dated , payable after date at , and endorsed by you, has this day been presented and demand made for thereof, which has been refused; said has been duly protested for non , and the holders now look to you for payment of the same.

Yours, &c.,

Notary Public Detroi

Exhibit G, marked by me.

WM. D. WILKINS, *U.*

And thereupon the said plaintiff rested its case.

The defendant, Anson Eldred, to maintain the issue o
did offer to read in evidence the following section of the ...
copartnership between Eldred & Balcom, and to the reading of which in evidence said plaintiff by its counsel did then and there object, for the reason that the same were irrelevant and incompetent and, as to the plaintiff's cause of action, immaterial; and which objection was overruled by the said judge, and the said articles of copartnership allowed to be read in evidence, and the same were read in evidence, and to which said ruling and decision of the said judge the

time a copy of this note and a copy of the notice sent. The certificate of protest was filled up on the same day that the endorsement on the face of the note was made, and it was attached to the note on the same day. I cannot say whether the certificate of protest has remained attached to the note ever since, because I handed it to the bank on the next day. I cannot say that the certificate of protest produced and attached to Exhibit B is the same certificate which was attached to the note on that day. I have not been called upon to make out any other certificate to the same effect. It is the
22 custom to minute the fees of the notary on the certificates of protest. The note was in my hands as paying teller of the bank, and it was a part of my duty to see that any paper left in my hands as paying teller, whether of a customer of the bank or belonging to the bank itself, was either paid or was duly protested for non-payment. The note came into my hands on the morning of the 14th day of August, 1861.

On re-direct-examination:

I have no doubt whatever that the protest attached to Exhibit B is the original certificate of protest made out by me at the time. I have never been called upon to make out any other.

H. P. SANGER.

Sworn and subscribed before me this 10th day of April, 1865, at Detroit, Michigan.

WM. D. WILKINS, *U. S. Comm'r.*

[Copy.]

$4,000. DETROIT, *June* 12, 1861.

Sixty days after date I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank. Value received.

(Signed) F. E. ELDRED.

Endorsed: ELDREDS & BALCOM.

Protested for non-payment August 14th, 1861.

H. P. SANGER,
Notary Public Wayne Co., Mich.

23 STATE OF MICHIGAN, *County of Wayne, ss:*

Be it known, that on the 14th day of August, in the year of our Lord one thousand eight hundred and sixty-one, at the request of H. R. Sanger, cashier, I, Henry P. Sanger, notary public, duly admitted and sworn, dwelling in the city of Detroit, county and State aforesaid, did present the original—a true copy of which is attached—at the Michigan Insurance Bank, in the city of Detroit, and demanded payment thereof, which was refused.

Whereupon I, said notary, at the request aforesaid, did protest, and by these presents do solemnly protest, as well against the maker and endorser of the said note as against all others whom it doth or may concern, for exchange or re-exchange, and all costs, charges,

damages, and interest already incurred by reason of the non-payment of said note; and I, the said notary, do hereby certify, that on the same day and year aforesaid due notices that said note had thus been presented for payment, and that payment thereof had been thus demanded and refused, and that the holders of the said note did and would look to the drawers, makers, and endorsers thereof for
24 payment of the same, notices were put into the post office of Detroit, with the full legal postage paid thereon, and directed as follows, after diligent enquiry being made for the residence of the drawers and endorsers, and not being able to ascertain it.

Notice for Eldreds & Balcom, directed Chicago, Ills.; and I further certify that the like notices were left as follows:

Notice left for	at
"	"
"	"
"	"

Each of the above-named places being the reputed place of residence of the person to whom the notice was directed, or for whom it was left as aforesaid.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office.

[SEAL.]

HENRY P. SANGER,
Notary Public Wayne county, Mich.

25 "*G.*"

DETROIT, MICH., 186 .

M———: Take notice that the for $, made by , dated , payable after date at , and endorsed by you, has this day been presented and demand made for thereof, which has been refused; said has been duly protested for non , and the holders now look to you for payment of the same.

Yours, &c.,

Notary Public Detroit, Mich.

Exhibit G, marked by me.

WM. D. WILKINS, *U. S. Com.*

And thereupon the said plaintiff rested its case.

The defendant, Anson Eldred, to maintain the issue on his part, did offer to read in evidence the following section of the articles of copartnership between Eldred & Balcom, and to the reading of which in evidence said plaintiff by its counsel did then and there object, for the reason that the same were irrelevant and incompetent and, as to the plaintiff's cause of action, immaterial; and which objection was overruled by the said judge, and the said articles of copartnership allowed to be read in evidence, and the same were read in evidence, and to which said ruling and decision of the said judge the

26 said plaintiff, by its said counsel, did then and there except.

Said articles of copartnership were dated June 2nd, 1856, and expired by their terms five years from July 1st, 1856.

Said section of said articles is as follows:

"3rd. That neither of the said parties shall employ any of the moneys, goods, or effects belonging to the said copartnership, or engage the credits thereof except for the benefit of the said joint business."

Said defendant offered and read in evidence the following depositions of Francis E. Eldred and Walter Ingersoll:

Francis E. Eldred, being of lawful age, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, did depose and say as follows:

I reside in Detroit, Michigan. In 1861 I knew the firm of Eldred & Balcom, doing business in Chicago and Milwaukee, and composed of Elisha Eldred, Anson Eldred, and Uri Balcom. The note produced and attached to my deposition, and marked Exhibit B, bears my signature. The endorsement on the back of said note of "Eldred and Balcom" is in the handwriting of Elisha Eldred. The body of the note is in my handwriting. The word "June" was written by me, and was written before I used the note. I trans-

27 ferred that note to the Michigan Insurance Bank, I should judge, at the time of its date. It was transferred at about that time. I made arrangements to borrow money of the bank, and transferred the note as security for money which the bank proposed to lend me. I borrowed money of the bank, for which they held that note as security. I had an arrangement with the firm of Eldreds and Balcom, by which they endorsed my notes and I endorsed theirs; and the endorsements were made in blank, and were filled up by the holders as they wished to use them. This note was endorsed in that way, and this arrangement was known to Anson Eldred as well as to the other partners. The said bank loaned to me on July 26, 1861, eight hundred and fifty dollars; on July 31st, 1861, one thousand dollars; on August 11, 1861, eight hundred and fifty dollars; on August 25th, 1861, seven hundred dollars, for which I gave four notes, the originals of which are now shown to me by the plaintiff, and identified by me, and copies thereof are hereunto annexed, and marked respectively Exhibits C, D, E, and F. I received the amount of said notes respectively from the bank on the times they bear date, and it was to secure the payment of these monies that I let the bank have the note marked Exhibit B, and the bank actually held the note marked B at the time they let me have

28 the monies above stated. On the last four notes something has been paid; they are not all paid, and I do not know what amount has been paid.

Cross-examination:

Exhibit B was endorsed in blank by Elisha Eldred, as above stated, and was delivered to me before it was executed. The printed

form of the note was not filled up when the endorsement was made. I had a number of such notes, and cannot now account why the word "August" in Exhibit B was rubbed out and June written over it. I wrote the body of the note. I was in the habit of sending to Eldreds & Balcom, by express, packages of notes signed by me, but not filled out, for their endorsement. I don't recollect anything about the fact of rubbing out "August" or writing "June" now, but know the word "June" is in my handwriting, and my knowledge of the fact that I wrote it is derived from an inspection of the note now, and not from any recollection of the circumstances. The four last notes were given from time to time as I wanted money to buy bark.

I gave the bank a chattel mortgage on the bark as additional security for the money advanced on the four notes, as above stated; cannot state the date of that mortgage.

Exhibit B represents the same debts which is due on the other four notes. The sums expressed in notes C, D, E, and F
29 were advanced at the times said notes bear date.

Exhibit B was delivered to the bank at or about the time it bears date. It was delivered before the other four notes.

There was no indebtedness existing between myself and the bank at the time of the delivery of the note marked B, and no money was advanced to me at the time of its delivery, but I drew the money on the other four notes as I happened to want it. This $4,000 note, marked B, was not discounted in the due course of business.

I frequently had paper discounted for me by the bank at 60 and 90 days. The payments made on the four notes were made by checks of Jewell & Sons on Hartford Bank in my favor, to pay for shipments of leather made by me to them, and said check by me deposited in the bank. I did have the entries of such payments in a book kept by me, but such book has been lost in moving the papers in my office. This was a book of shipments of leather by me to Jewell & Sons, and at the foot of each page was entered the amounts paid to the bank. I kept a cash book in my business, but not at this time. The only book kept in reference to my transactions with the bank was the book above referred to and these entries were made with reference to my transactions with Jewell & Sons.

There was no stipulated sum to be paid weekly, but I was
30 to pay in, from week to week, as I shipped the leather, such sums as remained after paying help. The shipments were mostly made by the Great Western railway in winter, and by J. S. Hurd & Company' propellers in summer.

None of the debts due the bank had fallen due at the time when Exhibit B matured. I do not think I was at all indebted to the bank at the time I gave them the chattel mortgage.

The chattel mortgage had no reference to past indebtedness, but wholly to future indebtedness; it had reference to any subsequent indebtedness which I might subsequently owe the bank. I cannot approximate to the amount due on the four notes C, D, E, and F; prolonged and severe illness since these transactions, and a near approach to death, has prevented my keeping such details in my

memory. The money obtained on the four notes was used entirely in the purchase of bark to fill the contract with P. Jewell & Sons. I was indebted to Jewell & Sons; part of the money went to pay their debt regularly, and after a certain time part was to be paid regularly to the bank; these payments were to be made out of the proceeds of my tannery; Jewell & Sons furnished me with hides. I borrowed the money from the bank to get the bark to tan them with, and shipped the leather to Jewell & Sons at Hartford, Connecticut, and they sent me a check on receipt of each bill of lading; and I used the checks as heretofore described.

31 At time of adjournment, being Monday, April 10, 1865, at 2 o'clock p. m., witness now desires to make the following statement as part of his evidence, to wit:

The four notes, C, D, E, and F, were originally for one thousand dollars each, and were endorsed by Eldreds & Balcom; as they came due I reduced them to the present amounts, and gave these as renewals of former notes. These notes were given in place of the original notes, which were endorsed by Eldreds & Balcom, and which were given before I transferred to the bank the note marked Exhibit B. When I made arrangements to get a further discount to purchase bark, I gave the bank this note B and a chattel mortgage, to secure them for money which they agreed to advance thereafter to purchase bark, as well as to secure previously existing indebtedness.

Cross-examination resumed:

The chattel mortgage covered bark which I had in my yard, bark enough to finish turning out the contract with Jewell & Sons; I cannot state the value of the bark; I had purchased considerable with my own means, besides that which I purchased with the advance I had received from the bank; in addition, as collateral security, I assigned to the bank the contract I had with Jewell & Sons; this was a contract by which they were to furnish hides, and I was to tan them at 6½ cents per pound. The $4.000 note, Exhibit B, and the chattel mortgage, were delivered to the bank at about the same time.

32 I think there was no doubt expressed as to the solvency of Eldred & Balcom; I was aware that the firm of Eldreds & Balcom dissolved in the summer of 1861, but cannot state on what day; I was aware that the firm of Eldreds & Balcom had failed at about the time they did fail; I was not aware that the firm of Eldreds & Balcom had failed at the time that I made the arrangement with the bank for the money, as above stated. The letter now shown to me, and marked Exhibit H, appears to be in my handwriting. The money value of my business with Jewell & Sons would probably average at the rate of $2 a hide; I would necessarily have to handle about twenty or twenty-five thousand dollars a year connected with that business; I did not, at this time, keep a full set of books, nor did I then keep a regular bookkeeper, whose business it was to attend to the books and nothing else. I did not keep a debit and credit account with the Michigan Insurance Bank, but only in my bank book; was doing business with no other bank at the time; I cannot tell

whether in June, July, or August, 1861, I kept a regular bill book or not, but I think I did of all of the notes of which these particular notes are originals. This was the only transaction in which I left Eldreds & Balcom's endorsement as collateral for my own paper; in every other case I left my own paper, endorsed by them, and
33 obtained the money on it at the time of delivering it. I have no recollection of any of the officers of the bank, at the time of the delivery of Exhibit B, stating that Eldreds & Balcom were hopelessly insolvent, and that they did not look on their endorsement as any security. An attachment suit was brought by the bank upon the note marked Exhibit B, but I cannot recall the date of the suit.

Ques. by def'ts' att'y. Was not this note, marked B, prepared for the express purpose of using it as the foundation of an attachment suit against the tannery property in Detroit, then standing in the name of Anson or Elisha Eldred, or to head of other creditors from getting a prior lien?

Ans. I have no recollection of anything of the kind.

Ques. by same. Can you swear that such was not the purpose for which said note was prepared, executed, and delivered?

Ans. I have no recollection of anything of the kind.

Ques. by the same. Was Mr. E. Wilcox, the attorney of the bank, who brought the attachment suit for the bank on Exhibit B, at the same time your attorney in your joint business?

Answer. He has been my attorney in what little I have had to do; I can't say whether he was the regular attorney of the bank at the time or not.

On re-direct examination:

On reflection, these notes were renewals of other notes in the same amounts, endorsed by Eldreds & Balcom, and those had been
34 preceded by still other notes in $1,000 each, also endorsed by Eldreds & Balcom, on three of which payments had been made, reducing them to the amounts for which the notes now produced stand. I also obtained from the bank, during that season, other monies besides these. At the time I gave the bank Exhibit B, I owed to them no indebtedness other than that which was endorsed by Eldreds & Balcomb. Exhibit B was intended, also, to stand as security for the debt which I owed on the four notes, as well as for any future indebtedness which I might contract.

On re-cross-examination:

Ques. by def'ts' att'y. Did not Mr. Elisha Eldred go with you to the bank, on July 19, 1861, for the purpose of assisting you to induce the bank to advance you the $4,000 of which you have testified?

Answer. I can't say; he was here at the time I made the arrangement, and it is my impression that it was before their failure.

On re-direct examination:

I made the arrangement to get the additional money to buy bark with Mr. Sanger, and gave the $4,000 note (Exhibit B) to Mr. Sanger,

and the indebtedness for the money to buy bark was an entirely additional indebtedness to that represented by the notes marked C, D, E, and F.

F. E. ELDREDS.

Sworn and subscribed before me, at Detroit, Mich., April 10, 1865.
WM. D. WILKINS,
U. S. nom.

35 *Exhibit D.—Marked by me, Wm. D. Wilkins, U. S. com.*

Know all men by these presents that we, Francis E. Eldred and Mercy A., his wife, of Detroit, of the first part, being justly indebted unto Eben N. Wilcox, of the same place, of the second part, divers sums which he has become liable to by reason of his endorsement of certain notes, bills, and other obligations for the said F. E., and in consideration of one dollar to us paid, have, for the purpose of securing the payment of said debt and the interest thereof, granted, sold, and mortgaged, and by these presents do grant, bargain, sell, and mortgage, unto the said Eben N. Wilcox the following goods, chattels, and personal property, to wit:

All and singular the live stock, crops, farm, implements, vehicles, harness, furniture, chattels, and property mentioned and referred to in the schedule hereto annexed, marked Schedule A, situate on the farm of said F. E., in Oakland county, or elsewhere, which said above-described property at the date of these presents is free and clear of all liens, conveyances, incumbrances, and levies, and for a valuable consideration we hereby warrant the above representations to be true.

To have and to hold the same forever, provided always and the condition of these presents is such, that if the said F. E. Eldred shall pay or cause to be paid at maturity those certain notes or
36 bills hereinafter mentioned and described, made by the said Francis E., and endorsed by the said Eben N. Wilcox, that is to say, one for the sum of $1,000, due at the Laporte Bank July 17th, 1861; one for $500, due to Wm. Stead, July 24th, 1861; one for $650, due to Moss Brothers, Oct. 9th, 1861; one to Detroit Savings Bank for $500, due Nov. 8th, 1861; one to Parsons & Fisher for $500, due Sept'r 8th, 1861; one to A. H. Day for $400, due Sept'r 8th, 1861; one to Parsons & Fisher for $696 49, due Oct. 11th, 1861, also endorsed by Warren Newberry; and any and all other notes, bills, or other obligations whatsoever of the said F. E. Eldred, the party of the first part, on which the party of the second part is now or may become liable, and any and all notes, bills, or obligations whatsoever which may be at any time given for the renewal or extension in whole or in part of any of the said above-enumerated or non-enumerated notes, bills, or other liabilities whatsoever, and shall pay and indemnify and save harmless the said E. N. Wilcox of, from, and against all and singular all costs, charges, damages, expenses, attorney and other fees, which he may sustain

or incur by reason of the non-payment of any of the said notes, bills, or other obligations above mentioned or referred to, (it being the intention hereof that this conveyance shall stand as a continuing subsisting lien and security for the benefit of said Wilcox until all his liability as endorser or guarrentor or otherwise for said
37 Francis E. shall be extinguished,) and upon the full payment and extinguishment thereof, then this instrument shall be void and of no effect; and I, the said Francis E., hereby agree to pay the same accordingly. But if default be made in such payment, the said E. N. Wilcox, his agent or attorney, is hereby authorized to sell at public auction after the like notice as is required by law for constables' sales, the goods, chattels, and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest, and reasonable expenses, and to retain the same out of the proceeds of such sale; the overplus or residue, if any, to belong and be returned to the said Francis E., or assigns. And the said Eben N., his attorney or agent, is hereby authorized at any time, when he shall deem the above security insecure, to take possession of said goods, chattels, and personal property, and the same retain in some convenient place, at the risk and expense of the said Francis E., until the said sums of money shall become due as aforesaid, and then to dispose of the same in the manner above specified.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the first day of July, in the year of our Lord one thousand eight hundred and sixty-one.

(Signed) F. E. ELFRED. [L. S.]
(") MERCY A. ELDRED. [L. S.]

Signed, sealed, and delivered in presence of—

38 *Schedule A.—Referred to in the foregoing instrument.—(Signed) F. E. Eldred.*

One Lillie's safe.
One large double desk.
One small "
One wardrobe.
One Fairbanks' scale.
Four chairs and one sofa.
Above at my office in Detroit.

Three rosewood sofas.
Three do. arm chairs.
Two do. sewing do.
Six do. chairs.
One do. piano.
Two do. center tables.
Two large mirrors.
One mahogany bookcase.
The above in my house in Detroit.

SEPT. 3*rd*—9 a. m.

One open wagon, at my house.
One double spring waggon (limber) and harness, at my house.
One fanning mill, at Chain farm.

39 [Schedule A referred to in the foregoing instrument. (Signed) F. E. Eldred.]

One stallion, sorrel, Col. Pascord, and his blankets.
One bay mare, Miss Bagg.
One " " Rose.
One do. do., Fanny Kemble.
One sulkey.
One top wagon & harness, single.
One open do. & harness, do.
One carriage and harness, double.
One open do., or iron down, & harness, do.
One double pleasure sleigh & robes.
One single do. & robes.
The above is at my house in Detroit.

One Spanish jack, Dick Johnson, at B. F. Hoag's, St. Charles, Illinois.

Two mules, 2 years old.
Two do. 1 do.
One bay mare & mule colt, (Ingersoll.)
One bay colt, 3 yrs. old, Glen Black Hawk.
One black filly, 2 yrs. old, do.
One double lumber sleigh.
Two heifers, 3 yrs. old.
Three do., 2 do.
Five do., 1 do.
One bull, 1 do.
Four cows, one cutting box, two plows.
Above at Chem farm, in the city of Detroit.

One brown mare, 4 years old.
Three carts & harness; two drays.

40 [Schedule A referred to in the foregoing instrument. (Signed) F. E. Eldred.]

One horse, Bay.
Above at my tannery in Detroit.

One bay stallion, Kemble Jackson, & his blanket.
One do. do., Island Jackson, do.
One-half do., Hambletonian, do.
One Spanish jack, Black Hawk.
One do. jenny, & 3 colts, Jennett.
One brown mare, Lady Jane, & 3 colts.
One roan do., Lady of the Lake, & 3 colts.
One black do., Flora, & 2 colts.

One bay do., Miss Thomas, & 2 colts, 1 G. K. Jackson, and 1 mule.
One grey do., Betsy.
One bay do., Botsford, & 2 colts, 1 G. K. Jackson, and 1 mule.
One brown do., Ligge, & 2 colts.
One sorrel do., Adda, & 2 colts, 1 G. K. Jackson, and one mule.
One dunn do., 4 yr. old, & 1 mule colt.
One bay do., Belle, & 1 mule colt.
One bl'k do., Independence.
Two colts out of Nelly, one bl'k filly & one bay colt.
One black mare, Cinderella, & mule colt.
One roan filly, 2 yrs. old, Hiped.
One bay do., " " out of Minehaha.
One Ayrshire bull.
Nine cows & nine calves.
Three boars, Suffolk.

41 [Schedule A referred to in the foregoing instrument. (Signed) F. E. Eldred.]

Five breeding sows & pigs.
Fifty-three sheep & lambs.
Two lumber waggons & harness, double.
Two skeleton do. do., single.
One lumber sleigh.
130 tons hay.
9 acres wheat,
18 do. oats,
3 do. pease,
4 do. potatoes,
} Part secured; balance growing.
2 acres turnips & carrots.
One mowing machine, 4 plows, 4 cultivators, 2 drays, one horse-power, one grist mill, 1 cutting box, 1 root cutter, one fanning mill.
The above on my farm at Farmington, Oakland co.

CITY CLERK'S OFFICE.

STATE OF MICHIGAN, *City of Detroit:*

I hereby certify that the annexed instrument in writing is a true and perfect copy of a chattel mortgage now on file in this office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of the city of Detroit this tenth day of December, A. D. 1862.

[SEAL.] FRANCIS RAMSTALLER,
City Clerk.

42 *Exhibit F.—Marked by me, W. D. Wilkins, U. S. com.*

This indenture made this first day of October, A. D. 1860, between Pliny Jewell, Pliny Jewell, jr., and Marshall Jewell, copartners as P. Jewell & Sons, at Hartford, Connecticut; Francis E. Eldred, of Detroit, Michigan, witnesseth:

First. The said P. Jewell & Sons, in consideration of the promises of the said Francis E., hereinafter, and for divers other valuable con-

siderations from him to them moving, do hereby covenant and agree to furnish to the said Francis E., at his tannery, in said Detroit, twenty thousand hide within two years from the date hereof, the said hides to be tanned by the said Eldred, and by him shipped after tanning to the said Jewell & Sons, as hereinafter agreed; and the said Jewell & Sons do for like considerations further covenant and agree to pay the said Eldred for tanning the said hides the sum of 6 and one-half (6½) cents per pound on the weight of the leather, in manner following, to wit: five cents (5) cash upon the receipt by them at said Hartford of the bill of lading of any given quantity shipped, upon the weight of said quantity; and one and one-half (1½) cents per pound to be applied at said time upon a certain promissory note of even date, for the sum of eighteen thousand dollars, ($18,000,) executed by said Eldred to said Jewell & Sons, and endorsed by Elisha Eldred and Anson Eldred, to go to the extinguishment, first,
of the accruing interest upon said note, which draws ten (10)
43 per cent., payable semi-annually, and then of the principal thereof.

Second. The said Francis E. Eldred, in consideration of the premises and of other valuable considerations, doth hereby covenant and agree well and properly to tan all such hides as he shall receive under the foregoing agreement from the said P. Pewell & Sons, with all due despatch, and to ship the leather when tanned to the said P. Jewell & Sons, at said Hartford, all freight upon said leather to be paid by said Jewell & Sons, and to receive as full compensation the aforesaid sum of six and a half (6½) cents, payable as aforesaid.

Third. It is hereby expressly understood and agreed by and between the said parties hereto, that the expense of all cartage and drayage of said hides, in the said city of Detroit, to the said tannery, and of said leather from said tannery to the place or places of shipment, is to be borne by the said Eldred, and that he is to receive as an equivalent therefor, all the refuse and offal of said hides.

Fourth. It it is further understood and agreed that all previous contracts and agreements concerning similar matters are annulled and of no effect hereafter, that is, between said parties.

In witness whereof, we have hereunto set our hands this first day of October, A. D. 1860.

In duplicate.

P. JEWELL & SONS.
FRANCIS E. ELDRED.

Attest:
ALFRED RUSSELL.

44 *Exhibit C.—Marked by me, Wm. D. Wilkins, com'r.*

Whereas I, Francis E. Eldred, of the city of Detroit, in the State of Michigan, am justly indebted to the Michigan Insurance Bank in the sum of three thousand four hundred dollars upon notes, part of which are now past due and unpaid, and the remainder are about to mature; and whereas the said bank, in consideration of the security hereinafter mentioned, have agreed with me, the said Eldred, to ad-

vance to me a sum of money not to exceed four thousand dollars, in payment of five hundred dollars each, from time to time, between this and the first of November next, in order in part to enable me to purchase the tan bark necessary for my business, and thereafter mentioned; and whereas for the purpose of securing to said bank the payment of such advances, and the interest thereon, and also the entire amount of the indebtedness first above mentioned, and the interest thereon, I have agreed with the said bank to execute all such instruments as may now or hereafter be or become necessary or proper for the purpose of fully and effectually securing to said bank a perfect and unquestionable lien on all of the tan bark in and about my tannery, on Woodbridge street, in the city of Detroit aforesaid, now in use, or then for use; and also upon all such bark as may at any time hereafter, prior to the payment of such indebtness in full, be
45 purchased by me for use in and about said tannery, and the business connected therewith, no matter from what source the means for the purchase of said bark may be derived.

Now, therefore, for the purpose of carrying out as far as may be practicable the above agreements on my part, I have granted, bargained, sold, and mortgaged, and by these presents do grant, bargain, sell, and mortgage, unto said Michigan Insurance Bank, the following goods, chattels, and personal property, to wit, all of the tan bark in and about the tannery above-mentioned, and all such as may be hereafter purchased by me as aforesaid, which said above-described property, at the date of these presents, is free and clear of all liens, conveyances, incumbrances, and levies; and I agree with said bank, that all the bark necessary for my business, which shall hereafter be purchased by me, shall be likewise free and clear of all liens. To have and to hold the same forever; provided always, and the condition of these presents is such, that if I, the said Eldred, shall pay or cause to be paid to the said bank the entire amount of advances made to me, as also my entire indebtedness above mentioned, in weekly installments of two hundred dollars each, commencing on the seventh day of November, A. D. 1861, and thereafter on the corresponding day in each week, then this instrument shall be void and of no effect, and I, the said Eldred, agree to pay the same accordingly; but if default be made in such pay-
46 ment, the said bank is hereby authorized to sell at public auction, after the like notice as is required by law for constable sales, the goods, chattels, and personal property hereinbefore mentioned, or so much thereof as may be necessary to satisfy the said debt, interest, and reasonable expenses, and so retain the same out of the proceeds of such sale, the overplus or residue, if any, to belong and be returned to me, said Eldred.

And the said bank is hereby authorized, at any time when it shall deem itself insecure, to enter upon the premises where said bark may be, and to take possession of said goods, chattels, and personal property, and the same retain in some convenient place at the risk and expense of myself, until the said sum of money shall become due as aforesaid, and then to dispose of the same in the manner above specified; and I also agree with said bank that at any time hereafter

upon demand made, I will execute and deliver any other instruments required by said bank for the purpose of fully and effectually securing a lien for such entire indebtedness upon any such bark as may hereafter be purchased by me or my agents.

In witness whereof, I, the said Francis E. Eldred, have hereunto set my hand and seal the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and sixty-one.

(Signed) FRANCIS E. ELDRED. [L. S.]

Signed, sealed, and delivered in presence of—
(Signed) H. R. SANGER.

47 STATE OF MICHIGAN, *City of Detroit, ss:*

CITY CLERK'S OFFICE.

I hereby certify that the annexed instrument in writing is a true and perfect copy of a chattel mortgage now on file in this office.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of the city of Detroit this tenth day of December, A. D. 1862.

[SEAL.] FRANCIS RAMSTALLER,
City Clerk.

48 *Exhibit E.—Marked by me, Wm. D. Wilkins, U. S. com.*

$850 00. No. DETROIT, *August* 11, 1861.

Three months after date I promise to pay to the order of H. K. Sanger, cash'r, eight hundred and fifty dollars, at the Albany City Bank, Albany, N. Y. Value received. Due.

F. E. ELDRED.

Exhibit F.—Marked by me, Wm. D. Wilkins, U. S. com.

$700. DETROIT, *Aug't 25th*, 1861.

Three months after date I promise to pay to the order of H. K. Sanger, cash'r, seven hundred dollars, at the Albany City Bank, Albany, N. Y. Value received. Due.

No. F. E. ELDRED.

Exhibit C.—Marked by me, Wm. D. Wilkins, U. S. com.

$850 00. DETROIT, *July 26th*, 1861.

Three months after date I promise to pay to the order of H. K. Sanger, cashier, eight hundred and fifty dollars, at the Albany City Bank, Albany, N. Y. Value received Due.

No. F. E. ELDRED.

Exhibit D.—Marked by me, Wm. Wilkins, U. S. com.

No. $1,000 00. DETROIT, *July* 31, 1861.

Three months after date I promise to pay to the order of H. K. Sanger, cashier, one thousand dollars, at the Albany City Bank, Albany, N. Y. Value received. Due.

F. E. ELDRED.

49 *Exhibit E.—Marked by me, Wm. D. Wilkins, U. S. com.*

CITY CLERK'S OFFICE.

STATE OF MICHIGAN, COUNTY OF WAYNE, *City of Detroit:*

I, Francis Ramstaller, clerk of the city of Detroit, do hereby certify that I have carefully and diligently examined the records of chattel mortgages in my office, and can only find three chattel mortgages now on file, in said office, and in full force against Francis E. Eldred, from the year 1856 to the date of this certificate, viz: one given by said F. E. Eldred to E. N. Wilcox, filed Aug. 13, 1861; another given by said Eldred to said Wilcox, filed Sept'r 3rd, 1861; and also another given by said Eldred to the Michigan Insurance Bank, filed July 25th, 1861.

In witness whereof, I have hereunto set my hand and affixed the corporate seal of the city of Detroit this 12th day of April, A. D. 1865.

[SEAL.] FRANCIS RAMSTALLER,
City Clerk.
By JOHN M. DALRYMPLE,
Deputy Clerk.

[Stamp.]

Exhibit H.—Marked by me, Wm. D. Wilkins, U. S. com.

F. E. ELDRED, *Tannner, No.* 1 *Michigan Ave.:*

50 DETROIT, MICH., *July* 16*th*, 1861.

D'R BROTHER: I am in receipt of letter from Elisha; he says E. and B. have given up the ship for good, and I cannot but infer from his letter, but what the going to protest of 3,500 dolls., in Boston, and the $1,000 he got discounted for me at Mutual Loan and Trust Co., Chicago, was the cause of it. He does very wrong to secure me in that way; had he reported that to me, saying you could go on if that was paid, I would have had an auction and sold every thing down to the last shirt, to have paid it. I had a good credit until he sent it broadcast to the world that I was on your paper $110,000 00, by making an assignment; since then it has all been down-hill work. I have not had any ambition to do any thing since. Write me and let me know what you have done. I feel anxious to hear. I learn through the papers that you have sold out. How is your mortgage against E. and B., and on the Mills & C.?

Yours, brother,

FRANCIS E.

P. S.—All well, except Julius; he is still confined to the house, and the Lord only knows when he will get out. Last night he did not sleep one minute.

51 Walter Ingersoll, being of lawful age, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversary aforesaid, did thereupon depose, testify, and say as follows, to wit:

I reside in Detroit; am cashier of the Michigan Insurance Bank. I was assistant cashier of said bank in the year 1861. Henry K.

Sanger was then cashier of said bank, and continued as such cashier up to September 1, 1863. He is now deceased. I continued as assistant cashier until Sept. 26, 1863, when I became cashier. I know Francis E. Eldred. Have known him 25 years and upwards. The Michigan Insurance Bank hold the four notes, of which Exhibit C, D, E, and F, are copies, as liabilities against F. E. Eldred; they are now in our "bills discounted," and among the assets of the bank.

The note marked Exhibit B, I believe, is held by the Bank as a collateral security for the payment of the notes C, D, E, and F. It was not rec'd by me, but by Mr. Sanger; but that is the way I understand it. Mr. F. E. Eldred has not, that I am aware, paid any part of the indebtedness secured by these four notes; it does not appear in the bank that he has. There are monies in the bank to the credit of Mr. Eldred, which might be applied to the payment of the indebtedness secured by these notes, to wit, $127 05, with interest
52 from the 27 October, 1862, on $405 thereof; and from November 22, 1862, on $123 thereof, against which we have a balance of $10, and interest thereon from October 1st, 1861. The whole amount of principal and interest on the notes C, D, E, and F, is due, less the credits above stated.

On cross-examination:

Ques. by def't' att'y. You say that you believe note marked Exhibit B to be held as collateral security by the bank for the indebtedness of Francis E. Eldred to the bank. Have you any personal knowledge whatever on that subject?

Answer. I did not see the note delivered nor hear the conversation between Mr. Sawyer and the person who delivered it.

Ques. by same. From what source is your belief on the subject derived?

Answer. From conversations with Mr. Sanger, their cashier, and with Mr. Owen, then and now president of the bank, and from hearing Mr. Eldred's testimony; and said note having been returned to us from our attorneys in Milwaukee (who have it in charge and are attempting to collect it) for inspection.

Ques. by same. Is there any entry or memorandum upon any book kept by the bank showing the date of the reception of Exhibit B by the bank, or exhibiting the purpose and object of its reception, as collateral or otherwise.

Answer. I have never seen such a record.

Ques. by same. Ought there to be such a record, according
53 to the due and usual course of business of the bank?

Answer. I do not think it necessary, nor do I believe it customary.

Ques. by same. You say that you have never seen any such record. Does any such record, to your knowledge or in your belief, exist?

Answer. I think it very likely that Mr. Sanger's letter endorsing this note to our att'y at Milwaukee, that the whole thing is set forth; although I have never seen such letter.

Ques. by same. To what attorney do you refer?

Answer. To W. J. Butler, I think, but am not sure those are his initials.

Ques. by same. At whose request was the note sent to W. J. Butler?

Answer. I cannot state, nor do I know.

Ques. by same. Do I understand you to say that where a note of the size of $4,000 is received by the bank for any purpose, it is not customary or usual to make in some place a written entry of the fact upon some of the books kept by the bank for that purpose?

Answer. When we receive discount paper not bearing indorsements but persons wishing to leave therewith other notes, bonds, or stocks, it is customary to make a note of them or a memorandum on our bill book, showing the security held for the payment of such note. Where we receive collateral security to already existing indebtedness, or indebtedness that may be incurred, I do not think it necessary to make an entry of it on our books, because it is to apply as security for general indebtedness and not special.

54

Ques. by same. Although it may be necessary to make such an entry, is it not the usual practice to do so?

Answer. I don't think it is. Sometimes cashiers who are very methodical in their business have a memorandum book, a mere tickler, for their own personal inspection and accomodation, so that they not lose the run of this kind of business. But this is not one of the books of the bank, but a book kept for the cashier's own accomodation.

Ques. by same. Have you any means of determining, or do you know, on what day and year the note marked Exhibit B was delivered to the bank?

Answer. I have no means of determining, and I do not know.

Ques. by same. Can you state whether there is in the possession of the bank, or of any of its officers, the means of determining such date of reception?

Answer. I am not aware of any such information on record.

Ques. by same. On the 14th day of August, 1861, was there any other indebtedness from the defendants to the plaintiffs, except that alleged to exist on the four notes C, D, E, and F.

Answer. I am not aware of any other claim that the bank had against the defendants at that time. There were some other notes of Eldreds and Balcom, I believe, given for purchase of vessels of the bank. I speak from recollection entirely, as it was something not in my department, and with which I had nothing to do; therefore I cannot speak positively.

55

Ques. by same. Was there on August 14, 1861, any indebtedness of F. E. Eldred to the bank, upon which the banks claimed the defendants to be liable, except the four notes above mentioned.

Answer. I am not aware that there was any. I had nothing to do with discounted paper, and I do not wish to swear positively as to things that I know nothing about.

Ques. by same. Does anything appear upon the books of the bank to show any liability of Eldreds and Balcom at said date upon any paper of F. E. Eldred, or of themselves?

Answer. I am not aware of any indebtedness of Eldreds and Balcom other than this note of $4,000, marked Exhibit B. I have since examined the books, and I find no indebtedness of Eldreds and Balcom, as existing on the 14th day of August, 1861, except as endorsers on F. E. Eldred's note for $700, due Aug't 25th, 1861, and that note was paid on the 13th day of September, 1861.

Ques. by same. Did the bank pay money to F. E. Eldred on these four notes to buy bark with?

56 Answer. No, sir; I don't understand that they did. They might, but I cannot state whether the money was given to him for any special purpose or not.

Qu. by same. Were these four notes secured by a chattel mortgage given by F. E. Eldred, or by the assignment of the P. Jewells & Sons' contract?

Ans. I am unable to give you any of the particulars respecting the chattel mortgage given to the bank by F. E. Eldred. In regard to the Jewell contract, I have to say that it appears that we discounted seven $500 notes for F. E. Eldred. One appears in his account to his credit, on July 31st, 1861; another August 5th, 1861; another Aug't 13th, 1861; another August 17, 1861; another September 5, 1861; another Sep'r 24, 1861; and another October 7, 1861. These notes were paid (as I believe and as shown by the books) by amounts received of P. Jewell & Son on their contract.

Qu. by same. Out of what moneys did the $117 05, spoken of in your direct exam'n, come?

Answer. $4 05 was the balance of a credit to special deposits for account of F. E. Eldred; $123 00 was for 20½ cords of bark, at $5 a cord, as shown by the books of the bank. The special acct. refered to is headed "special deposits," and any deposits made with the bank to apply on indebtedness not due, or past due, are

57 placed with this account and are applied in the final payment.

A copy of the "Special Deposits," so far as related to F. E. Eldred, is now produced and attached to this my deposition, and marked Exhibit I.

Qu. by same. When F. E. Eldred gave the four notes, were these notes renewals of previous notes?

Answer. It appears that they were renewals, (from the book of the bank which I now hold,) that they were renewed once. I judge so, from the amounts of four notes being of corresponding amounts with the four notes above referred to.

Qu. by same. Were the four notes, C, D, E, and F, given at the date of the maturity of previous notes of which you allege that they were renewals?

Answer. I will not state positively that they were, for I don't know the fact here that they were renewals; but the note for $1,000, dated July 31, 1861, is the same date of the maturity of a note of a similar amount. The note for $850, dated Aug. 11, 1861, is of the same date of the maturity of a note of similar amounts; and the note of $750, dated August 25th, 1861, bears the same date of the maturity of a note for the same amount. The note of July 26, 1861, for $850, I

believe, stands for the note for the same amount due July 19, 1861; and I have no doubt that the notes now exhibited are renewals of the
58 four notes above stated. I feel quite certain that these are renewals of the notes above mentioned, and I should not feel more certain if I had all of the books of the bank before me. Exhibit K, hereunto attached, is a copy from the bill book of the bank, showing the dates and amounts of F. E. Eldred's notes as entered, covering a period from October 23rd, 1860, to January 2nd, 1862, furnished at the request of def't's attorney, giving dates and amounts and time of running. In Exhibit I the debit of June 9, 1862, of $3,812 88, is for the amount of seven notes of $500 each, and interest, being $49 93, of Francis E. Eldred. The difference, $262 95, was passed to the credit of F. E. Eldred in special deposits, and was afterwards drawn out to apply on indebtedness of Francis E. Eldred to the Michigan Insurance Bank.

Ques. by same. Is it not the custom amongst the banks for parties renewing paper to give their checks for the paper maturing, the amount of the renewal notes being passed to their credit?

Answer. It is the custom of the Michigan Insurance Bank.

Ques. by same. On the 14th day of August, 1861, did not Elisha Eldred, one of the defendants, have money on deposit in the Insurance Bank? And if so, how much?

Answer. That I cannot state; I have not the books here,
59 and therefore I cannot now answer the question. I have since examined the books, and now state that I find no money at the credit of Elisha Eldred at that date in said bank.

Ques. by same. Do you know whether Elisha Eldred went to the bank on the 19th day of July, 1861, with F. E. Eldred, for the purpose of negotiating the money obtained upon the four notes?

Answer. I do not.

Ques. by same. When did you first know of the failure of Eldred & Balcom?

Answer. I cannot give you the date.

Ques. by same. Did you ascertain the fact of their failure from Elisha Eldred and F. E. Eldred, or from the public papers?

Answer. I cannot state how I became possessed of the information; I have no means of telling how or when I learned it. It was a common rumor that the firm had failed.

(Deponent being now asked to produce a copy of the private account of F. E. Eldred with the Michigan Insurance Bank, now produces a copy of said account, embracing the period between July 1, 1861, and October 1, 1861, which account is hereunto appended and marked Exhibit L.)

In regard to the debit of $1,080 87 of August 5, 1861, I think it must have been for a check of Mr. F. E. Eldred's given for
60 his note of $1,000, payable in New York or Albany, protested for non-payment, returned to us by our eastern correspondents and paid in Detroit, with the exchange and notarial fees. On August 14, 1861, Mr. E. N. Wilson was not the regular attorney of the bank. Mr. Tours may be considered as the regular attorney

of the bank at that time; but Mr. Sanger was in the habit of employing various attorneys.

WATTS INGERSOLL.

Sworn and subscribed before me April 14, 1865.

WM. D. WILKINS,
U. S. Commissioner East'n Dist. of Michigan.

61 *Exhibit L.—Marked by me, Wm. D. Wilkins, U. S. com'r.*

Dr. Francis E. Eldred, in acc't with Michigan Insurance Bank. Cr.

1861.			1861.		
July 1	To balance	50	July 30	By cash	200
26	" cash	859 37	31	" dis	490 96
"	" " 50,220	270 —	"	" "	834 63
27	" "	150 —	Aug. 5	" "	490 96
31	" " 50,400	450 —	6	" cash	340 60
Aug. 1	"	21 80	10	" "	100 —
2	" " 50,100	150 —	13	" dis	981 92
5	" " 1,010.87,50	1,060 87	"	" "	490 96
6	" " 100, 33.50	133 50	"	" cash	328 20
"	" " 42 vouchers ret'd	135 —	17	" dis	490 96
7	" " 61.55,22.87	84 42	20	" cash	273 70
8	" " 50, 39.90,50	139 90	27	" "	372 15
9	" "	50 —	Sept. 3	" "	461 31
10	" " 50, 60	110 —	5	" dis	490 96
13	" " 200, 100, 32.20, 100	432 20	12	" cash	255 19
14	" "	100 —	30	" balance	10 —
"	" "	200 —			
15	" " 36, 75, 50	161 —			
16	" "	56 80			
17	" "	25 —			
19	" " 30, 50	80 —			
20	" " 164.25, 51.19	215 44			
22	" "	131 59			
24	" " 200, 25	225 —			
27	" " 25, 100	125 —			
29	" "	100 —			
30	" " 100, 38.75, 25	163 75			
Sept'r. 2	" " 50, 46.87, 50	146 87			
62 Sept 3	" "	100 —			
"	" "	114 82			
4	" " 46.86, 100, 39 vouchers ret'd	146 86			
5	" 25. 89, 100	125 89			
6	" "	89 —			
9	" " 50, 35	85 —			
10	" "	123 41			
	7 vouchers ret'd	$6,612 49			$6,612 49

1861.			1861.		
Oct'r. 1	To balance	10 —	Sept. 24	By dis	490 96
Sept'r. 24	" cheque	490 96	Oct. 7	" "	490 96
Oct'r. 7		490 96		" balance	10 —
		$991 92			$991 92
1861.					
Oct'r. 1	To balance	10 —			

Exhibit K.—Marked by me, Wm. D. Wilkins, U. S. com'r. east dis't Mich.

F. E. ELDRED.

			1860.				
320	F. E. Eldred, note	Eldred & Halcomb	Aug. 20	2 mos.	Oct'r 23	60	1,000
426	.... " ..... " ..	.... " ..... "	Sept'r. 11	2 "	Nov. 14	"	1,000
495	.... " ..... " ..	.... " ..... "	" 26	2 "	" 29	"	1,000
586	.... " ..... " ..	.... " ..... "	Oct'r. 5	2 "	Dec'r 8	"	1,000
662	.... " ..... " ..	.... " ..... "	" 20	2 "	" 23	"	1,000
770	.... " ..... " ..	.... " ..... "	Nov. 12	2 "	Jan'y 15	61	1,000
808	.... " ..... " ..	.... " ..... "	" 26	2 "	" 29	"	1,000
63							
829	.... " ..... " ..	.... " ..... "	Dec'r 6	2 "	Feb. 9	"	1,000
858	.... " ..... " ..	.... " ..... "	" 20	2 "	" 23	"	1,000
			1861.				
894	.... " ..... " ..	.... " ..... "	Jan. 12	2 "	March 15	"	900
926	.... " ..... " ..	.... " ..... "	" 26	2 "	" 29	"	1,000
964	.... " ..... " ..	.... " ..... "	Feb. 7	2 "	April 10	"	1,000
1010	.... " ..... " ..	.... " ..... "	" 21	2 "	" 24	"	800
1083	.... " ..... " ..	.... " ..... "	M'ch 15	2 "	May 18	"	900
1104	.... " ..... " ..	.... " ..... "	" 27	2 "	" 30	"	1,000
1142	.... " ..... " ..	.... " ..... "	April 8	2 "	June 11	"	900
1175	.... " ..... " ..	.... " ..... "	" 22	2 "	" 25	"	750
1258	.... " ..... " ..	.... " ..... "	May 16	2 "	July 19	"	850
1310	.... " ..... " ..	.... " ..... "	" 28	2 "	" 31	"	1,000
1365	.... " ..... " ..	.... " ..... "	June 8	2 "	Aug't 11	"	850
1401	.... " ..... " ..	.... " ..... "	" 22	2 "	" 25	"	700
1826	.... " ..... " ..	collateral	July 24	3 "	Oct't 27	"	500
1827	.... " ..... " ..	....	" 26	3 "	" 29	"	850
1145	.... " ..... " ..	....	" 30	3 "	Nov. 2	"	500
1860	.... " ..... " ..	collateral.	" 31	3 "	" 3	"	1,000
1876	.... " ..... " ..	....	Aug. 7	3 "	" 10	"	500
1898	.... " ..... " ..	....	" 14	3 "	" 17	"	500
1962	.... " ..... " ..	....	" 30	3 "	Dec. 3	"	500
2008	.... " ..... " ..	collateral	Sept'r 12	3 "	" 15	"	500
2014	.... " ..... " ..	....	Aug. 11	3 "	Nov. 14	"	850
2015	.... " ..... " ..	....	" 25	3 "	" 28	"	700
2044	.... " ..... " ..	collateral	Sept'r 18	3 "	Dec. 21	"	500
2092	.... " ..... " ..	.... "	" 30	3 "	Jan'y 2	62	500

64 *Exhibit I.—Marked by me, Wm. D. Wilkins.*

Dr. Special deposits. F. E. Eldred,
In acc't with Michigan Insurance Bank. Cr.

1862.			1861.		
Feb'y 14	To cash	$380 00	Nov. 8	By cash	$200
June 9		3,812 88	19	"	200
Aug. 26		5 73	25	"	200
Oct'r 27		884 05	Dec'r 11	"	100
Dec'r 1	Balance	127 05	17	"	200
			31	"	200
			1862.		
			Jan. 20	"	156 43
			29	"	150
			Feb. 3	"	200
			11	"	380
			18	"	200
			25	"	200
			M'ch 5	"	200
			20	"	200
			Ap'l 8	"	175 40
			10	"	200
			29	"	200
			May 8	"	283 28
			16	"	167 77
			June 9	"	262 95
			20	"	22 78
			July 3	"	100
			11	"	100
			18	"	100
			25	"	95 17
			Aug. 12	"	100 66
			16	"	100
65			Sept'r 3	"	8 22
			Oct'r 27	"	384 05
			Nov. 22	" to ½ cords bark	123
		5,209 71			5,209 71
			1862.		
			Dec. 1	By balance	127 05

Said defendant further offered and read in evidence the following depositions of John Owen, Darius J. Davidson, Robert P. Toms, and Alfred Russell:

John Owen, being of lawful age, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, did depose and say as follows, to wit:

I reside in Detroit, Michigan; am president of the Michigan Insurance Bank, and have filled such post since 14 or 15 years ago; know Elisha and Anson Eldred; have never seen Uri Balcom. (Exhibit B, attached to the deposition of F. E. Eldred, on file in this suit, shown to witness.) Cannot recall the time I first saw this note, but think it was since Mr. Sanger left the bank, a year ago last
66 fall, in Sept'r, 1863; and I am not positive that I have seen it until a very recent period. I knew that there was such a note; have been aware of it for years; got such information from

Mr. Sanger and Elisha Eldred; am not able to state definitely in regard to the time when the note came into the possession of the bank; do not know of any entry or memorandum in possession of the bank which would show the time; have no personal knowledge for the purpose for which the note was given to the bank. I always supposed it was a regularly discounted note until within the last week or ten days. My knowledge of the existence of the note was derived entirely from conversations with Mr. Sanger and Mr. E. Eldred. It was always spoken of as a regular debt due the bank, when it was spoken of at all. I cannot definitely state when I became aware that Eldreds and Balcom had become insolvent and were likely to fail. I know they did fail, but I cannot tell whether I was promptly advised of it, or whether days or weeks elapsed before I found it out. It was some time in the spring of 1861. I can state that it was early in March, 1861, that I became aware from the statements of Mr. Elisha Eldred to me, that he was fearful of serious embarrassments to the firm; but he did not state that there was danger of the
67 firm becoming insolvent. (A letter being now shown to witness, which purports to be a copy of a letter on file in office of the clerk of the circuit court of Wayne county, Michigan, and now marked Exhibit B.) I suppose this is a copy of the letter of the same date; although I have no copy of the original, that I am now aware of, with which to compare it, I don't doubt it to be a correct copy of the original; cannot state at what time I became aware of the actual failure of Eldreds and Balcom; have nothing with which to refresh my memory in regard to it. I do not recollect that Mr. Elisha Eldred, during the first half of the year 1861, frequently called on me to consult and devise in regard to his affairs. If he was then in Detroit, I have no doubt that he frequently called on me about his affairs; but I have no definite recollection in regard to it. I purchased some vessels from Eldreds and Balcom, in which I obligated myself to take up some paper which they had given to the Insurance Bank in purchase of some of the vessels; this was the paper of Eldreds and Balcom, and this purchase took place some time in March, 1861; don't remember when it was consummated precisely; E. Eldred purchased the vessels for Eldreds and Balcom. I have no reason to suppose that in August, 1861, Mr. Elisha Eldred had any moneys on special deposit with the bank or with myself.

Ques. by def't' att'y. Are you able to state whether Mr. Elisha Eldred has at any time since had deposits in the possession of the bank, or in your possession?

68 Answer. (The witness is advised, by his counsel, that the above question is irrelevant and improper here, and by the advice of his counsel, G. V. N. Lathrop, esq., he refuses to make answer to it.) I cannot state whether the $4,000 note, Exhibit B, covered all the liabilities of the firm of Eldreds & Balcom to the bank, on August 14th, 1861, the date when the note matured.

Ques. by same. Do you remember that Francis E. Eldred and Elisha Eldred called at the bank on the 19th day of July, 1861, to negotiate

a loan of $4,000, to enable F. E. Eldred to buy bark and go on with his business?

Answer. I remember having a conversation with Elisha Eldred about advancing money to buy bark; cannot state whether they called together or separately; cannot state what year or month it was in. It was not in the bank, but in my private office in the same building. My recollection is that F. E. Eldred and E. Eldred did not call together. I cannot call to mind any time when they did call together. They may have done so, but I think not.

On cross-examination:

I had no personal knowledge of the taking of the $4,000 note by the bank. The discounting of paper and the financial management of the bank was conducted entirely by Mr. Sanger, the cashier. He was not in the habit of consulting me about discounting paper, except on rare occasions. Sometimes he would consult me, but it was very seldom. As president of the bank, I was not in the habit
69 of overseeing its business or interfering with it. I was not a salaried officer of the bank. I have no recollection of Mr. Sanger's ever having spoken to me particularly as to how this $4,000 note was received. I had heard it spoken of as a liability of Eldreds & Balcom, but in no respect differing from any other regularly discounted paper. It is only within the last week or ten days that I have heard the question raised as to the particular way in which this note was received; and I had no occasion before to investigate as to how the note was received. Mr. Sanger was not in the habit of consulting me as to taking securities unless it was some very special matter.

On re-direct examination:

I do not know at whose request this $4,000 note was sent by the bank to Milwaukee for collection. I think it was before Mr. Sanger dissolved his connection with the bank.

J. OWEN.

Sworn and subscribed before me, April 14, 1865.

WM. D. WILKINS,
U. S. Com'r East. Dist. of Mich'n.

Exhibit B.—Marked by me, Wm. D. Wilkins, com'r.

Exhibit A.

DETROIT, *August 9th*, 1861.

Mr. ANSON ELDRED:

DEAR SIR: In reply to the inquiry in your favor, of the 6th
70 inst., I would say that in conversation with your brother Elisha, about the 1st of last March, he then told me of the serious embarrassments of the firm of Eldred & Balcom, and said he could not see his way clear to carry the business of the firm along and meet the large engagements they would have falling due soon after the opening of navigation, and feared that suits would be in-

stituted to compel payment; that four of your vessell would be grain carrying and that in their trips to Buffalo and Lake Ontario they would be peculiarly exposed to arrest; that he was engaged in making large repairs to the vessels, and very much needed money to pay his bills; that he had made up his mind that the vessels must be sold, and preferred that I should buy them, particularly as he was anxious to pay an old debt due by your firm to the Michigan Insurance, and which they had been made by the sale of sundry vessels by the bank of your firm, and of which the Mason was one and the Pilgrim another. Whereupon I agreed to make the purchase, and did buy the Burns, Montezuma, Mason, and Pilgrim for $26.500, and paid the amount by taking up the notes due by your firm to the bank, amounting to $13,110, and paid in cash, in March and April, 13,370. all of $26,500, which I am told is entered in detail on the books of your firm in Chicago, and has been exhibited to you. I did
71 not assume to pay any claims against the vessels, but they were to be delivered to me free from debt. I have, however, since been required to endorse a large amount of paper turned out to parties to whom the vessels were indebted, to protect them from arrest, your brother not having been able to pay the bills, as he expected to when the sale was made.

Very respectfully, yours,

(Signed) J. OWEN.

Darius J. Davidson, having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversary aforesaid, did thereupon depose, testify, and say as follows:

I reside in Detroit, Michigan; am an attorney and counsellor-at-law. On the 31st day of March, 1863, at the request of Mr. Anson Eldred, I examined the original files of this circuit court at Detroit, in the case of the Michigan Insurance Bank against Anson Eldred, Elisha Eldred, and Uri Balcom, an attachment case. (The note, marked Exhibit B, attached to the deposition of Francis E. Eldred, on behalf of the pl'tiffs, in this cause, being now shown to witness, he says:) This note formed a part of the files which I examined, as stated above. There was no certificate of protest attached to it at that time, as there is now. I have no recollection of observing that there was any evidence or appearance of any certificate of
72 protest or other paper having been once attached to it or subsequently removed. Mr. Anson Eldred and I were together when we examined it, and conversed about the absence of any certificate of protest. The only paper attached to it at all was a small slip containing a memorandum of judgment made by the clerk. The two papers now produced by me, marked Y and Z, attached together, are precise copies of the note and the slip attached to it, as they appeared when I examined the files, as above stated. I placed my originals on the original note and on the two copies above referred to. I have examined a file of the Detroit Daily Tribune, published in Detroit, and specially that paper of date July 12, 1861, which I

a loan of $4,000, to enable F. E. Eldred to buy bark and go on with his business?

Answer. I remember having a conversation with Elisha Eldred about advancing money to buy bark; cannot state whether they called together or separately; cannot state what year or month it was in. It was not in the bank, but in my private office in the same building. My recollection is that F. E. Eldred and E. Eldred did not call together. I cannot call to mind any time when they did call together. They may have done so, but I think not.

On cross-examination:

I had no personal knowledge of the taking of the $4,000 note by the bank. The discounting of paper and the financial management of the bank was conducted entirely by Mr. Sanger, the cashier. He was not in the habit of consulting me about discounting paper, except on rare occasions. Sometimes he would consult me, but it was very seldom. As president of the bank, I was not in the habit
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Very respectfully, yours,

(Signed) J. OWEN.

Darius J. Davidson, having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversary aforesaid, did thereupon depose, testify, and say as follows:

I reside in Detroit, Michigan; am an attorney and counsellor-at-law. On the 31st day of March, 1863, at the request of Mr. Anson Eldred, I examined the original files of this circuit court at Detroit, in the case of the Michigan Insurance Bank against Anson Eldred, Elisha Eldred, and Uri Balcom, an attachment case. (The note, marked Exhibit B, attached to the deposition of Francis E. Eldred, on behalf of the pl'tiffs, in this cause, being now shown to witness, he says:) This note formed a part of the files which I examined, as stated above. There was no certificate of protest attached to it at that time, as there is now. I have no recollection of observing that there was any evidence or appearance of any certificate of
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now here produce. In the column, on the fourth page thereof, headed "commercial," there appears a notice of the Chicago lumber market, and therein a notice of the failure of the lumber firm of Eldreds & Balcom, in the words following: "During the past week two of the heaviest firms in the city have virtually given up business, that of Messrs. Loomis and Ludington, who have sold out to Mr. Brower, their book-keeper; and that of Messrs. Eldreds & Balcom, who have sold their stock here to the Merchant Loan and Trust Company, and their stock at the mills to a house in Milwaukee."

D. J. DAVIDSON.

Sworn and subscribed before me on April 14, 1865.

WM. D. WILKINS,
U. S. Com. East. Dist. of Mich'n.

73 Robert P. Toms, being of sound mind and of lawful age, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversary aforesaid, did depose and say as follows, to wit:

I reside in Detroit, Michigan; am an attorney-at-law. On March 25th, 1864, I sent to W. I. Butler, esq., of Milwaukee, the promissory note mentioned in the deposition of D. J. Davidson, as Exhibit B. At this time there was no certificate of protest attached to the note. There appeared on the face of said note, according to my best recollection, a memorandum indicating that the same had been protested by Henry P. Sanger, notary public, giving the date of the protest. On April 3rd, 1864, I received a letter from Mr. Butler, requesting me to forward him the certificate of protest. I immediately called on Henry P. Sanger, who was then acting as paying teller of the Michigan Insurance Bank, and asked him if he had the certificate of the protest of the Eldred note. He replied that he had, and immediately stepped into the vault of the bank, took the certificate of protest, and handed it to me. This certificate I mailed to Mr. Butler on April 3rd, 1864. When I received it from Mr. Sanger it was completely executed, and he took it from the vault and handed it to me. At that time I was, and am now, the regular attorney of the Michigan Insurance Bank.

R. P. TOMS.

74 Sworn and subscribed before me, April 14, 1865.

WM. D. WILKINS.
U. S. Com. East'n Dis'ct Mich'n.

Alfred Russell, being of sound mind and of lawful age, and having been by me first carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth in said matter of controversy, did depose and say:

I annex hereto a duplicate original of the "P. Jewell & Sons' contract," assigned to the plaintiffs and mentioned in the deposition of Francis E. Eldred and Walter Ingersoll. I drafted the two origi-

nals, and my signature, as attesting witness, is upon the paper annexed. (Contract referred to, hereto attached, and marked Exhibit F.)

ALFRED RUSSELL.

Sworn and subscribed before me on April 14, 1865.

WM. D. WILKINS,
U. S. Com'r East'n Dis'ct Mich'n.

And the above and the foregoing was all the evidence, and the entire testimony that was given on the trial of the above-entitled cause, and both parties rested the case. And thereupon the said presiding judge proceeded to charge the jury as follows:

In order to charge the defendant as endorser of the note in suit, there must be evidence of demand of payment on the maker,
75. and the notice of such demand and of non-payment be sent by mail to the place of business or residence of the firm on the day, or the first mail of the next day, after such demand. It is not necessary that the certificate of the notary be annexed to the note at the time of the protest. If the jury find that the note in suit had been indorsed in blank by the firm of Eldreds & Balcom, the defendant being one of the said firm, and with his consent, there was authority to Francis Eldred to fill up the note and negotiate it at any date he may think proper to use it. It is no matter whether the note was dated on the day of its negotiation or not, if the note was actually dated, filled up, and negotiated before the day of payment. If the notes falling due in the bank at the time the note in suit was delivered to the bank were of a similar character to the one in suit, with the firm as endorsers in blank, and filled up and negotiated by F. E. Eldred, with the consent of the defendant, and the note in suit was so indorsed, with other notes, and filled up by said Eldred for a debt of his own, then contracted, as a collateral security to these other notes, there is a legal liability thereby cast upon the defendant to pay this note. If there were other notes previously
76 negotiated in the bank that had been indorsed by the firm with defendants' consent, and the note in suit was actually negotiated in the bank for a valuable consideration, and delivered by F. E. Eldred as a collateral security for his other notes, then the defendant is liable, unless the bank had actual notice of the dissolution of the firm before the actual filling up and negotiation of the note.

And the said presiding judge did further instruct the said jury as follows:

If the note in suit was never actually negotiated to the bank, but got up by Eldred and accepted by the bank, in pursuance of a corrupt agreement between said Eldred and the bank, to defraud the defendant, then the plaintiff cannot recover.

And to which said paragraph and part of the said charge of the said judge, and each and every part thereof, the said plaintiff, by its counsel, did then and there except.

The jury returned a verdict in favor of the defendant. And upon the entering of the said verdict, the said plaintiff, by its counsel, filed a motion to set aside the verdict and to grant a new trial, for

the reason that the verdict was contrary to law and against the evi-
dence; which motion was agreed and submitted. And the
77 said presiding judge overruled the said motion and denied the
same, and to which said ruling said plaintiff, by its counsel, did then and there except.

And because the said exceptions do not appear in the record of the proceedings of this cause, I have, at the request of the parties hereto, set my hand and seal, at Milwaukee, this eleventh day of May, A. D. 1866.

[SEAL.] A. G. MILLER.

DECEMBER 3, 1868.—This day came Wm. P. Lynde, H. M. Finch, and B. K. Miller, and filed their bond in the penalty of five hundred dollars, conditioned that the plaintiff shall prosecute a writ of error to effect, &c., as follows, to wit:

Bond for costs on writ of error.

Circuit court of the United States for the district of Wisconsin.

THE MICHIGAN INSURANCE BANK
against
ANSON ELDRED, ELISHA ELDRED, & URI BALCOM. } In error.

Know all men by these presents that we, William P. Lynde, Benjamin K. Miller, and Henry M. Finch, are held and firmly bound unto Anson Eldred, Elisha Eldred, and Uri Balcom, in the sum of five
hundred dollars, to be paid to the said Anson Eldred, Elisha
78 Eldred, and Uri Balcom, their executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 2nd day of December, 1868.

Whereas the above-named, The Michigan Insurance Bank, hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Wisconsin:

Now, therefore, the condition of this obligation is such, that if the above-named, The Michigan Insurance Bank, shall prosecute its said writ of error to effect, and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] WM. P. LYNDE.
[SEAL.] H. M. FINCH.
[SEAL.] B. K. MILLER.

Sealed and delivered in presence of—

_____ _____.

Endorsed: December 3, 1868. Approved.

A. G. MILLER,
District Judge.

Whereupon a writ of error and citation issued, and copy of writ of error lodged for defendant in error.

79 UNITED STATES OF AMERICA, *District of Wisconsin, ss:*

I, Edward Kurtz, clerk of the Circuit Court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file and remaining of record in my office, being a full and complete copy of the record and proceedings in the suit of The Michigan Insurance Bank vs. Anson Eldred et al., No. 410, Law Docket A.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court, at the city of Milwaukee, in said district of Wisconsin, this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the said United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

80 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America for the district of Wisconsin, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the district of Wisconsin, before you, between the Michigan Insurance Bank, plaintiff, and Anson Eldred, Elisha Eldred, and Uri Balcom, defendants, a manifest error hath happened, to the great damage of the said the Michigan Insurance Bank, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December inst., in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-third.

[SEAL.] EDWARD KURTZ, *Clerk.*

81 The United States of America to Anson Eldred, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United Statesto be holden at Washington, on the first Monday of December inst., pursuant to a writ of error filed

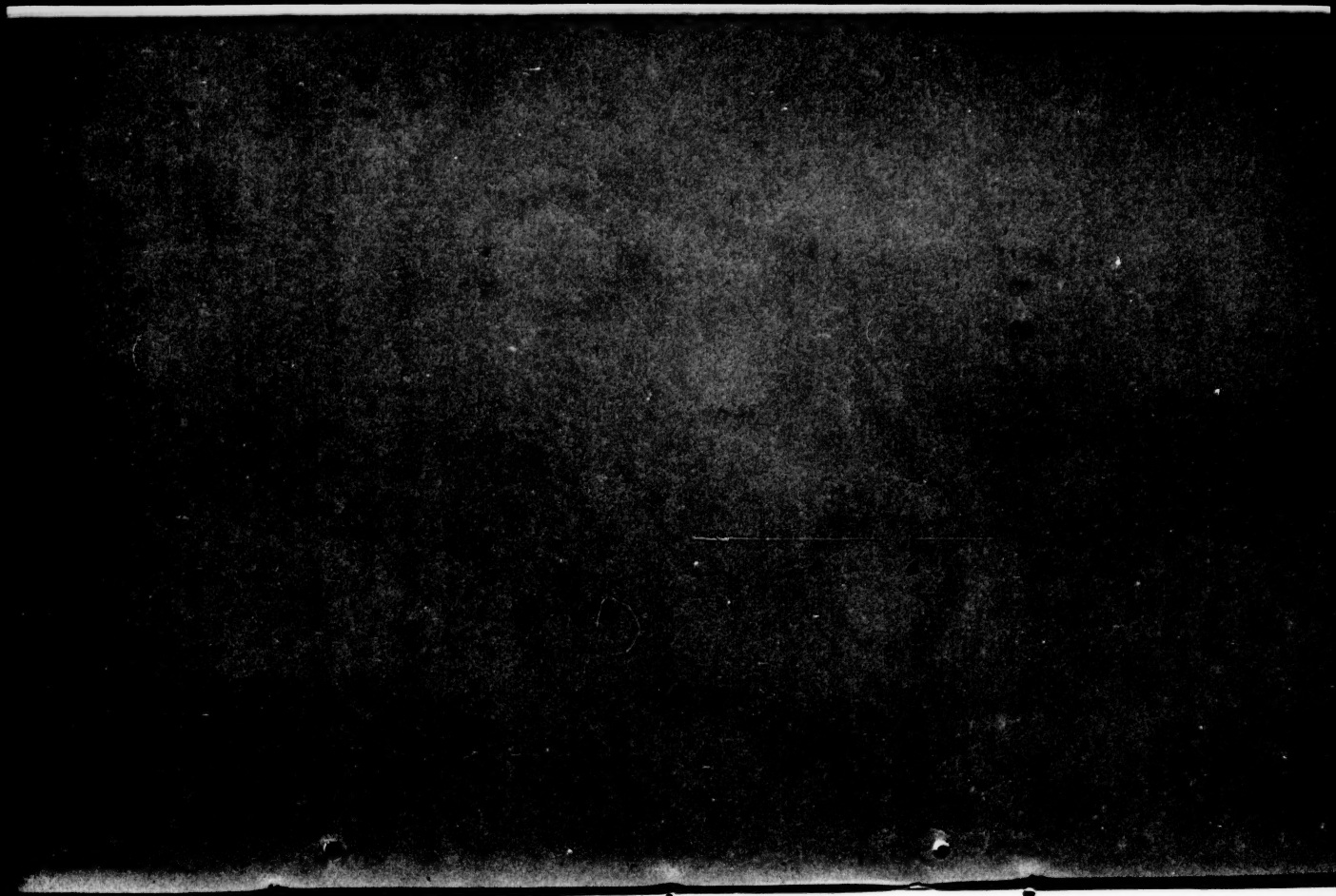
in the clerk's office of the circuit court of the United States of America for the district of Wisconsin, wherein the Michigan Insurance Bank is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this third day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the 93d.

[SEAL.] A. G. MILLER, *District Judge.*

I accept service of above citation, this fourth day of December, A. D. 1868.

JOHN W. CARY,
Att'y for Def't in Error.



SUPREME COURT, UNITED STATES.

THE MICHIGAN INSURANCE BANK, *Plaintiff in Error*,

vs.

ANSON ELDRED, *Defendant in Error.*

STATEMENT OF CASE.

WM. P. LYNDE, *Plaintiff's Counsel.*

SUPREME COURT OF THE UNITED STATES.

THE MICHIGAN INSURANCE BANK,
Plff. in Error,

vs.

ANSON ELDRED,
Def't. in Error.

STATEMENT OF CASE.

This is an action brought by the Michigan Insurance Bank against Anson Eldred, Wm. Balcom & Elisha Eldred, composing the firm of Eldreds & Balcom, as endorsers of a promissory note, of which the following is a copy.

$4,000. DETROIT; June 12th, 1861.

Sixty days after date I promise to pay to the order of Eldreds & Balcom four thousand dollars at the Michigan Insurance Bank; value received.

[Signed] F. E. ELDRED.

Endorsed, ELDREDS & BALCOM.

The summons was served upon Anson Eldred, the only defendant residing within the district of Wisconsin, and the only one who appeared in the cause.

The plaintiff, on the trial of the cause, introduced the note in evidence, and proved that it was duly protested, and notice of the non-payment was duly served upon the endorsers, and rested.

The defendant, Anson Eldred, under the plea of non-assumpsit, and without notice, offered to read in evidence a clause of the articles of co-partnership between Eldreds & Balcom, which was objected to by plaintiff's counsel for reasons given, as appears on p. 13, f. 24 of printed case. The objection was overruled, and testimony received, and exception noted.

This clause was read for the purpose of showing that Elisha Eldred, who was one of the firm of Eldreds & Balcom, and who had endorsed this note in the firm name, had bound himself in the articles of co-partnerships not to use the firm name except for the benefit of the said joint business.

There was no pretence that the bank had any knowledge of the articles of co-partnership or of the purpose for which the co-partnership's name in this instance had been used. The defendant then introduced the deposition of Francis E. Eldred, the maker of the note, and the brother of Anson Eldred, the defendant. He testifies that the note was in his hand writing; that the endorsement of Eldreds & Balcom was made by Elisha Eldred, one of the firm; that he transfered the note as security for a loan about the time the note bears date. He says, "I had an arrangement with the firm of Eldreds & Balcom by which they endorsed my notes and I endorsed theirs; and the endorsements were made in blank, and were filled by the holders as they wanted to use them. This note was endorsed in that way, and this arrangement

was known to Anson Eldred as well as to the other partners p. 14, f. 27, printed case.

The defendant then read the deposition of Walter Ingersol, the cashier of the Michigan Insurance Bank, which corroborates the testimony of Francis Eldred that this note was transferred to the bank as collateral security for moneys loaned to Francis E. Eldred. The defendant then offered and read in evidence the depositions of John Owens, President of the bank, Parrins J. Davidson and Robert P. Toms. But there is nothing in either of those depositions which changes at all the facts above proven. Here the defendant rested, and the judge proceeded to charge the jury; this charge will be found on p. 97 of the printed case.

The judge in his charge to the jury upon this evidence, makes use of the following language:

"If the note in suit was never actually negotiated to the bank, but got up by Eldred and accepted by the bank in pursuance of a corrupt agreement between said Eldred and the bank to defraud the defendant, then the plaintiff cannot recover."

To this charge we excepted; we regarded it as remarkable language to be used by the Court upon the testimony in the cause. The testimony is all contained in this printed case, so certified by the presiding judge, and the testimony is positive and without one word of conflicting proof that this note was negotiated to the bank, and there is not one word of the whole evidence tending to prove that this note was "got up by Eldred and accepted by the bank in pursuance of a corrupt agreement between said Eldred and the bank to defraud the defendant." Is not this instruction clearly within the rule laid down by this Court in U. S. vs. Preitling, 20th Howard, 252, where his Honor, Ch J. Taney, in giving the opinion of the Court, uses the following language:

"It is clearly error in a Court to charge the jury upon a supposed or conjectural state of facts, of which no evidence has been offered. The instruction pre-supposes that there is some evidence before the jury which they may think sufficient to establish the facts hypothetically assumed in the opinion of the Court; and if there is no evidence which they have a right to consider, then the charge does not aid them in coming to correct conclusions, but its tendency is to embarrass and mislead them. It may induce them to indulge in conjectures, instead of weighing the testimony." In Goodman vs. Simonds, 20 Howard, 359, his Honor, Justice Clifford, in delivering the opinion of the Court says: "When a prayer for instruction is presented to the Court, and there is no evidence in the case for the consideration of the jury, it ought alwrys to be withheld, and as a general rule, if it is given under such circumstances, it will be error in the Court, for the reason that its tendency may be, and often is, to mislead the jury, by withdrawing their attention from the legitimate points of inquiry involved in the issue."

POINTS AND AUTHORITIES.

1st point.

The plaintiff was the holder of negotiatable paper, received before due, for a valuable consideration. The Court erred in allowing to be read in evidence a clause from the articles of co-partnership of Eldreds & Talcom, tending to impair the validity of the paper, without any proof of notice to plaintiff.

Goodman vs. Simonds, 20 How. 343.
Murray vs. Lardner, 2 Wal. 110.

This is a familiar principle, constantly referred to in the Municipal and County Bond cases so frequently before this Court.

I.

The Circuit Court, in giving the instruction that "if the note in suit was never actually negotiated to the bank, but got up by Eldred, and accepted by the bank in pursuance of a corrupt agreement between said Eldred and the bank to defraud the defendant, then the plaintiff cannot recover," went entirely outside of the evidence in the cause, and the instruction tended to mislead the jury, and was error.

Blackburn vs. Crawford, 3 Wal. 194.
Chandler vs. Van Roeder, 24 How. 227.
Jewell vs. Parr, 12 Com. B. R. 909.
Caldwell vs. United States, 8 How. 366.
Goodman vs. Simonds, 20 How. 359.
United States vs. Breitling, 20 How. 252.
Moffitt vs. Cressler, 8 Clark Iowa 122.

WM. P. LYNDE,
Plaintiff's Counsel.

In the Supreme Court of the United States.

DECEMBER TERM, 1869.

THE MICHIGAN INSURANCE BANK,
Plaintiff in Error,
vs.
ANSON ELDRED,
Defendant in Error.

No. 145.

The defense in this case was—

1st. That the note was a fraud, and never, in fact, negotiated, but was made by F. E. Eldred, and delivered to the bank with a view of defrauding the defendant.

2d. That if it ever was negotiated in the course of business, it was done by F. E. Eldred, the maker, after the bank had actual notice that the partnership of Eldreds & Balcom had ceased to do business or exist as a firm.

On the trial there was no pretense that this note had ever been discounted by the bank, but it was claimed that it had been received by the bank, and was held as collateral security for other inbebtedness of F. E. Eldred.

The note, on its face, showed either that it had been altered after it was given, or else that it was not given till some time in the month of August, long after the copartnership of Eldreds & Balcom had ceased to exist.

The note showed on its face that the date was originally August 12, 1861, and that date was altered to June by writing June over August.

F. E. Eldred swears that he wrote June over August, but can give no explanation why or when it was done. He swears

that it was before he used the note, but as to when the note was used, he can give no satisfactory account. (Record, pp. 14, 15, 16.)

Eldred subsequently swears that note and chattel mortgage were delivered about the same time. (Record, p. 16.)

The chattel mortgage referred to bears date July 24, and was recorded July 25, 1861. (Record, pp. 24, 25.)

The partnership of Eldreds & Balcom expired by its terms July 1, 1861, and they ceased business at the time. (Record, p. 14; Record, p. 29; folio 59; p. 33, 35.)

It does not appear when the bank became possessed of the note. There was no record of its receipt or the purpose for which it received it. (Record, pp. 36, 33.)

There was no satisfactory proof of its protest. (See Record testimony of Sanger, pp. 11, 12; testimony of Davison, p. 35; testimony of Tomes, p. 36; and testimony of Ingersol, pp. 25 to 30.)

All these matters were insisted upon as showing that the whole thing was a fraud, and concocted after the partnership had ceased and notice thereof to the plaintiff. The trial lasted two days. (Record, p. 7.)

II

There was a motion to set aside the verdict, and for a new trial before the judge who tried the cause, and a full argument had, and the motion refused. (Record, p. 8.)

III.

There was no error in admitting the articles of partnership. They were necessary to show when the partnership ceased, and, in connection with notice to plaintiff, fixed the time of its end.

It was also proper to show that by its terms said partnership name was not to be used ontside of the business; but the judge charged that if it was so used with the knowledge and consent of defendant, Anson, the indorsement was valid, notwithstanding the agreement.

The agreement in the partnership articles would be the law of this case without the agreement. F. E. Eldred, the maker, it is claimed, negotiated this note to the bank. The bank is therefore chargeable with notice that Eldreds & Balcom were accommodation indorsers, and in such case the defendant would not be liable on the indorsement unless it were shown that he assented or was knowing to it, or that the articles of copartnership allowed it. The articles of copartnership were therefore properly given in evidence for this purpose.

There was no error, and the judgment should be affirmed.

JOHN W. CARY,

Counsel for Defendant in Error.